Supreme Court, U.S.
FILED

02 - 24 JUN 10 2002

OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Richard E. George
Petitioner,

v.

Commissioner of Internal Revenue
Respondent.

On Petition For Writ Of Certiorari From The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL APPENDIX

Richard E. George
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June, 2002

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TAX COURT RULES INVOLVED

Rule 91. Stipulations for Trial, states, in part, (1) General: Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate; (2) *Stipulations to Be Comprehensive*[1]*:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not grounds for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of subparagraph (1), must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

Rule 142. Burden of Proof (a) General: (1) The burden of proof shall be upon the petitioner, except as otherwise provided by statute. (2) See Code Section 7491[2] where credible evidence is introduced by the taxpayer.

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[1] The Commissioner did not participate in the tax court discovery process and then, at the last minute, sought a non-comprehensive stipulation. As part of discovery, petitioner requested items such as "all evidence and information" relied upon to determine that petitioner had a "tax liability." Commissioner's counsel responded by stating "The information you seek is not relevant to the subject matter of your case" and then proceeded to request and was awarded sanctions against George for not agreeing to a one-sided stipulation of facts that included only Form W-2 wages (the presumed evidence of liability) and excluded facts George claimed to be relevant, such as property taxes paid.

[2] 26 U.S.C. 7491. Burden of proof (a) Burden shifts where taxpayer produces credible evidence (1) General rule If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

UNITED STATES TAX COURT

WASHINGTON, DC 20217

RICHARD E. GEORGE, Petitioner,	)	
v.	)	Docket No. 11164-99
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ORDER

Petitioner has moved to compel answers to interrogatories and request for production of documents (the motion). Rule 70(b)(1), Tax Court Rules of Practice and Procedure, states: "The information or response sought through discovery may concern any matter not privilege and which is relevant to the subject matter involved in the pending case." Petitioner has failed to demonstrate the relevance of the information that he seeks to discover to the subject matter of this case. For that reason, the motion shall be denied.

The Clerk is directed to attach a copy of the motion to the order served on petitioner's counsel.

Upon due consideration of the foregoing, it is ORDERED that the motion is denied.

(Signed) James S. Halpern
James S. Halpern
Judge

Dated: Washington, D.C.
April 21, 2000

Richard E. George
Bench Opinion by Judge James S. Halpern
Docket No. 11164-99 June 15, 2000

THE COURT: The Court has decided to render oral findings of fact and opinion in this case, and the following represents the Court's oral findings of fact and opinion.

This bench opinion is made pursuant to the authority granted by Section 7549(b) of the Internal Revenue Code of 1986, as amended, and Rule 152 of the Tax Court Rules of Practice and Procedure.

By notice of deficiency dated April 20, 1999 (the notice), respondent determined a deficiency in petitioner's federal income tax for 1997 of $32,905 and an addition to tax under section 6651(a)(1) of $8,226.25.

Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Certain facts have been stipulated by the parties and were recited by counsel for respondent at the start of the trial. Those facts are incorporated herein by this reference.

At the time the petition was filed, petitioner resided in Menlo Park, California.

Petitioner filed a purported 1997 Form 1040, U.S. Individual Income Tax Return (the original return), on or about April 15, 1998. On line 7 of the original return petitioner wrote zero as the amount of wages, salaries, tips, et cetera. On line 9 he wrote that he had received $463 in dividends. On line 37 he entered $2,650 as the amount of personal exemption. On line 38 petitioner entered zero as the amount of his taxable income, and on line 39 he entered zero as the amount of tax due.

On December 8, 1999, petitioner's attorney submitted a Form 1040X, Amended U.S. Individual Income Tax Return, for

1997 (the amended return), to respondent. Respondent did not accept the amended return.

In the notice, the principal adjustment leading to respondent's determination of the deficiency in question is the inclusion in the petitioner's gross income of wages in the amount of $128,444. Petitioner did receive wages of $128,444 in 1997.

In the notice, respondent calculated petitioner's taxable income by allowing petitioner a standard deduction of $4,150, and decreased his personal exemption by $159. At trial, petitioner claimed substantial deductions in lieu of the standard deduction. Except in one respect, petitioner failed to substantiate his entitlement to the claimed deductions. Petitioner claims an interest deduction of $47,033, which amount of mortgage interest payments was reported to respondent by certain mortgage lending institutions. We accept that petitioner paid interest in that amount. Nevertheless, petitioner has failed to show that he is entitled to deduct that amount of interest as a trade or business expense or otherwise. (See sec. 163.) On the amended return, petitioner claimed a home mortgage interest deduction of $25,141. We will allow him a deduction for interest paid in that amount in lieu of the standard deduction allowed by respondent. We allow him no additional itemized deductions.

Section 6652(a)(1) imposes an addition to tax for a taxpayer's failure to file a timely return, unless the taxpayer can establish that such failure "is due to reasonable cause and not due to willful neglect." The original return correctly states petitioner's name, address, Social Security number, filing status, and exemptions. It is signed and dated. Its main defect is that it contains zeros where greater amounts should be shown. It constitutes a return, see Unites States v. Long, 618 F.2d 74, 75 (9th Cir. 1980), and apparently was timely filed. We do not sustain respondent's addition to tax under section 6651(a)(1).

Respondent also moves that the Court impose a sanction against petitioner under section 6673(a). Petitioner objects. Under section 6673(a), we may impose a penalty not to exceed $25,000 where a taxpayer has instituted or maintained proceedings primarily for delay or where the taxpayer takes posisitions that are frivolous or groundless. Sec. 6673(a)(1)(A) and (B).

We believe that petitioner has maintained this proceeding primarily for delay and has taken positions that are frivolous and groundless. The principal adjustment giving rise to the deficiency in this case is respondent's determination that petitioner had wage income in 1997 of $128,444. In the petitioner, petitioner assigned error to that determination and averred that he had in his possession "sufficient information and documentation to substantiate the accuracy of Petitioner's income, including but not limited to Wages," for 1997. At trial, petitioner conceded that he had wage income in the amount of $128,444. Prior to trial, petitioner refused to stipulate with respondent that he had received Forms W-2 showing such income. During an informal pretrial conference with the Court, petitioner refused to stipulate to his tax return for 1997 or the W-2s. Respondent was compelled to bring witnesses representing two of petitioner's former employers, prepared to testify to petitioner's wage income for 1997. In light of petitioner's averment in the petition that he could substantiate the accuracy of his wage income and his concession at trial that he had wage income in the amount determined by responent, the Court interprets petitioner's refusal to stipulate with respect to his wage income as a tactic designed primarily to delay this proceeding. Moreover, petitioner's concession leads to the conclusion that his position in this case is groundless. Finally, petitioner has made constitutional and other arguments that have been soundly rejected by the courts, and must be construed as groundless. At trial, petitioner maintained that only corporations, and not individuals, were subject to the income tax. That is a groundless argument. See, e.g., Liddane v. Commissioner, T.C. Memo. 1998-259.

Because petitioner has maintained this proceeding primarily for delay and has taken positions that are frivolous and groundless, we sanction him by imposing upon him a penalty under section 6673(a)(1) of $2,500.

Petitioner has asked for sanction against respondent and his counsel. Petitioner has provided no grounds to sanction respondent or his counsel.

That concludes this bench opinion. Decision will be entered pursuant to Rule 155.

(Whereupon, at 9:35 a.m. the bench opinion in the above-entitled matter was adjourned.)

UNITED STATES TAX COURT

RICHARD E. GEORGE, Petitioner,	)	
v.	)	Docket No. 11164-99
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

DECISION

Pursuant to the opinion of the Court filed June 15, 2000, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED AND DECIDED: That there is a deficiency in income tax due from the petitioner for the taxable year 1997 in the amount of $26,466.00;

That there is no penalty due from the petitioner for the taxable year 1997, under the provisions of I.R.C. §6651(a)(1); and

That there is a sanction due from the petitioner for the taxable year 1997, under the provisions of I.R.C. § 6673(a)(1), in the amount of $2,500.

(Signed) James S. Halpern

Judge.

Entered: OCT 19 2000

UNITED STATES TAX COURT

RICHARD E. GEORGE, Petitioner,	)	
v.	)	Docket No. 11164-99
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

NOTICE OF APPEAL

Notice is hereby given that petitioner Richard E. George appeals the above-captioned Tax Court decision, entered on the 19th day of October 2000, to the United States Court of Appeals for the 9th Circuit.

The primary reason for the appeal is that the respondent and the Tax Court are demanding payment of an un-apportioned direct tax in violation of Article I of the United States Constitution. The Court stated in a pre-trial conference that the 16th amendment allows such a direct tax to be applied to the petitioner, whereby the petitioner stated at trial that the 16th amendment does not apply in this case since the 14th amendment does not allow states to pass laws, including amendments, that would abridge the immunities of United States citizens; and the immunity from direct taxation would constitute such an immunity. The Court avoided the issue by stating only that the argument had been "soundly rejected" without citing any District Court or Supreme Court decisions in support of its opinion.

Alternatively, if the Court upholds an un-apportioned direct tax against the petitioner, the respondent and the Court have erred by not allowing the petitioner to take deductions and making gross miscalculations contrary to overwhelming credible evidence provided by the petitioner.

Furthermore, the Court has erroneously imposed sanctions on the petitioner and the petitioner has substantially prevailed in this matter, placing the burden of proof on the respondent.

Dated this 15th day of January 2001

Without prejudice,

By: /s/ Richard E. George
Richard E. George
Petitioner
431 Central Avenue
Menlo Park, California 94025

01/19/01

UNITED STATES TAX COURT
DOCKET ENTRIES

Docket No. 11164-99
Richard E. George
v. COMMISSIONER OF INTERNAL REVENUE

Pro Se

431 Central Ave.
Menlo Park, CA 94025

NO.	DATE	EVENT	FILINGS AND PROCEEDINGS
01	06/18/99	PF	PETITION Filed: Fee Paid
02	06/18/99	DPT	DESIGNATION of Trial at San Francisco, CA
03	08/02/99	ACS	ANSWER (C/S 07/30/99).
04	12/29/99	NTD	NOTICE of Trial on 06/05/00 at San Francisco, CA.
05	12/29/99	SPTO	STANDING PRE-TRIAL ORDER attached to Notice of Trial
06	04/17/00	MOTP	MOTION by petr. to compel ans. to interr. & docu. w/Exs. (Filed & Served Per Judge)
07	04/21/00	MOT	MOTION by Jerold A. Reiton & Daren G. Wein to withdraw. (N.Obj) (C/S 04/17/00)
08	04/21/00	O	ORDER mot. to compel is Dn.
09	06/05/00	TRL	TRIAL before Judge Halpern at San Francisco, CA Also called 6/7/00 & 6/15/00. 6-7-00 Mot. to impose sanct. filed (see below) --BENCH OPINION RENDERED, JUDGE HALPERN

(Continuation)

NO.	DATE	EVENT	FILINGS AND PROCEEDINGS
10	06/07/00	TMEM	TRIAL MEMORANDUM for petr. (SFC)
11	06/07/00	SUPP	SUPPLEMENTAL TRIAL MEMORANDUM for petr. (SFC)
12	06/07/00	TMEM	TRIAL MEMORANDUM for resp. (C/S 5/18/00) (SFC)
13	06/07/00	MOTR	MOTION by resp. to impose sanctions. (C/S 6/7/00) (SFC) (MOOT--NO ORDER)
14	06/12/00	MOTP	MOTION by petr. to impose sanctions. (served w/out action - per Judge) (MOOT--NO ORDER)
15	07/05/00	TRAN	TRANSCRIPT of 6/7/00 rec'd. (TRL)
16	07/15/00	TRAN	TRANSCRIPT of 6/15/00 rec'd. (Bench Opn)
17	07/19/00	NSTS	NOTICE of Service of Transcript of trial. (Decision will be entered under Rule 155.)
18	09/18/00	COMR	COMPUTATION by resp.
19	09/18/00	NOF	NOTICE of Filing Resp's comp. Obj/Comp to be filed: 10/10/00
20	10/11/00	COMP	COMPUTATION by petr.
21	10/19/00	DEC	DECISION ENTERED, Judge Halpern
22	01/16/01	NOAP	NOTICE OF APPEAL by petr. to U.S.C.A., 9th Cir. NO FEE REC'D.
23	01/19/01	NOFC	NOTICE of Filing with copy of Not. of App. sent to the parties.